

FIRST STRIKE ENVIRONMENTAL,

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AGBCA No. 2000-158-1

Appellant

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DECISION OF THE BOARD OF CONTRACT APPEALS

August 16, 2001

Before HOURY, POLLACK, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge HOURY.

This appeal arose under Contract No. 56-04H1-9-117053 between the Forest Service, U. S. Department of Agriculture (USDA), and First Strike Environmental of Bend, Oregon (Appellant). The contract arose from a request for quotations that established pricing arrangements and terms and conditions for contractors to provide equipment and services for purposes of fighting forest fires. Accepting an order dated September 30, 1999, Appellant provided a driver with a 1977 White water tender truck with a 3,000 gallon capacity. The truck was severely damaged on or about October 3, 1999, when driven by Appellant's driver. It went off the road and slid down an embankment. The incident occurred at night, on a narrow mountain road, when visibility might have been affected by fog and smoke.

Appellant filed a claim in the amount of \$43,950 for damage to the truck. Appellant asserted that under the terms of the contract the Forest Service was obligated to warn of dangerous conditions and to initiate corrective actions, which it failed to do. By decision dated March 31, 2000, the Contracting Officer (CO) denied the claim, concluding that there was no fault on the part of the Forest Service and that Appellant had accepted the risks. Appellant filed a timely appeal. The Board has jurisdiction under the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613.

After the Complaint, Answer, and Rule 4 File were submitted, the Board convened a telephone conference on March 16, 2001, at which a number of the factual issues were identified that might have a bearing on the outcome of the appeal. The parties were directed to the Board's most recent case on the issue, and a hearing was set for May 16, 2001. By letter dated April 26, the parties advised that they had reached a settlement, and that once a settlement agreement had been signed, Appellant would withdraw the appeal. By letter dated May 25, 2001, the Board was advised that a settlement agreement had been signed, and that Appellant wished to withdraw the appeal.

DECISION

The appeal is dismissed with prejudice.

EDWARD HOURY
Administrative Judge

Concurring:

ANNE W. WESTBROOK
Administrative Judge

HOWARD A. POLLACK
Administrative Judge

Issued at Washington, D.C.
August 16, 2001